

Before the
Federal Communications Commission
Washington, DC 20554

2001 OCT -1 P 4: 26

In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Clackamas Education Service District)
Marylhurst, Oregon)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

RECEIVED

File No. SLD-147541

CC Docket No. 96-45

CC Docket No. 97-21 ✓

ORDER

Adopted: September 26, 2001

Released: September 27, 2001

Before the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Request for Review filed by Clackamas Education Service District (Clackamas), Marylhurst, Oregon.¹ Clackamas requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) to deny Clackamas' application for discounted services under the schools and libraries universal service support mechanism.² For the reasons set forth below, we remand Clackamas' application to SLD for further review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its

¹ Letter from Clackamas Education Service District, Marylhurst, Oregon, to Federal Communications Commission, filed October 13, 2000 (Request for Review).

² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Tom Cook, Clackamas Education Service District, dated March 9, 2000 (SLD Letter); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Tom Cook, Clackamas Education Service District, dated September 15, 2000 (Administrator's Decision on Appeal).

³ 47 C.F.R. §§ 54.502, 54.503.

technological needs and the services for which it seeks discounts.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered an agreement for eligible services, it must file a FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom it has entered an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵ Approval of the application is contingent upon the filing of a FCC Form 471, and funding commitment decisions are based on information provided by the applicant.

3. On the FCC Form 471, applicants must certify, among other things, that the schools and libraries they represent have secured access "to all of the resources ... necessary to make effective use of the services purchased" and that they have authority to submit the request on behalf of the entities included in the application.⁶ Review of the applicant's certifications by SLD is an important part of SLD's responsibility for reviewing funding applications to ensure compliance with statutory requirements and Commission rules. Section 254(h)(1)(B) of the Act limits discounts to services provided in response to bona fide requests made for services to be used for educational purposes.⁷ The certification requirement helps achieve compliance with section 254(h)(1)(B) by ensuring that requests for discounted services are, in fact, bona fide requests.⁸ In addition, SLD's review of applicants' certifications is an important means by which SLD curbs waste, fraud, and abuse in the schools and libraries universal service support mechanism.⁹

4. Clackamas filed seven applications as a consortium seeking discounts under the schools and libraries universal service support mechanism for Funding Year 3.¹⁰ Clackamas provided to SLD documentation describing its consortium structure. These documents showed that Clackamas hosted a statewide program called the Oregon Public Education Network (OPEN). OPEN consists of Technical (Tech) Centers that provide connectivity to the schools and school districts. Clackamas explained that it supported the Tech Centers, and the Tech Centers in turn serve the districts and the schools.

5. SLD contacted individual schools within the consortium to verify that they were aware that Clackamas was filing an E-rate application on the schools' behalf. SLD determined that at least one school listed as a member of the consortium was unaware that an application for

⁴ 47 C.F.R. § 54.504 (b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ FCC Form 471, OMB No. 3060-0806, at Block 6 Item 25 and Block 6, Item 33 (September 1999); *see also* SLD website, <<http://www.sl.universalservice.org>>.

⁷ 47 U.S.C. § 254(h)(1)(B).

⁸ *Id.*; *see also* 47 C.F.R. § 54.504(b)(2).

⁹ *See* 47 C.F.R. § 54.702(h) (requiring that the Administrator's annual report to the Commission detail the Administrator's "administrative action intended to prevent waste, fraud, and abuse").

¹⁰ *See* Clackamas Education Service District's FCC Forms 471, Application Numbers 143605, 143609, 143640, 145618, 147531, 147532, 147541, filed April 5-6, 1999.

discounts under the universal service mechanism for schools and libraries had been submitted on its behalf. SLD then contacted Clackamas by phone and asked Clackamas to provide letters of agency for each school district for which it was requesting funding.¹¹ Clackamas asked SLD if it could provide letters of agency from the Technical Centers that served the school district.¹² SLD did not respond to this inquiry.¹³ Finding that Clackamas did not have permission to act on behalf of entities listed in the consortium application, SLD determined that Clackamas did not qualify for funding, and accordingly, by letter dated March 9, 2000, SLD denied funding for each of Clackamas' applications.¹⁴

6. Clackamas then filed an appeal with SLD on April 6, 2000.¹⁵ In its appeal, Clackamas again explained its consortium structure. Clackamas stated that it supports the Technical Centers, and the Technical Centers in turn serve the districts and the schools.¹⁶ Clackamas stated that it did not directly serve the schools for which SLD sought letters of agency.¹⁷ By letter dated, September 15, 2000, SLD denied Clackamas' appeal.¹⁸ SLD explained that the applicant certifies on the FCC Form 471 that the entities it represents have secured access to adequate resources to make effective uses of the discounts.¹⁹ SLD further explained that it is the responsibility of the applicant to provide documentation to support that certification, if requested.²⁰ In response, Clackamas filed the instant Request for Review with the Commission.²¹

7. We have reviewed the record before us. Initially, we note that in requiring Clackamas to submit letters of agency for consortium members, SLD was acting within its authority to implement procedures to ensure compliance with Commission rules and regulations.²² However, we find that Clackamas' application involved a complex multi-tier

¹¹ Letter to Schools and Libraries Division, Universal Service Administrative Company, from Tom Cook, Clackamas Education Service District, filed April 6, 2000 (SLD Appeal).

¹² *Id.* See also Schools and Libraries Division, Universal Service Administrative Company, Problem Resolution Log, Clackamas Education Service District (1999) (showing that SLD contacted Clackamas by phone six times between July 7, 1999 and August 11, 1999 to discuss documents needed to support Clackamas' FCC Form 471).

¹³ *Id.*

¹⁴ SLD Letter.

¹⁵ SLD Appeal.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Administrator's Decision on Appeal.

¹⁹ *Id.*

²⁰ *Id.*

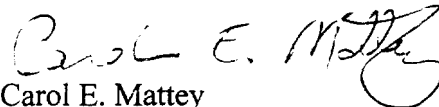
²¹ Request for Review.

²² Administration of the schools and libraries support mechanism is the responsibility of SLD, under the oversight of the Schools and Libraries Committee of USAC. See 47 C.F.R. § 54.705(a)(1) (setting forth the functions of the Schools and Libraries Committee) and 47 C.F.R. § 54.701(g)(i) (directing the Administrator to establish the Schools

consortium. Upon determining that at least one school within the consortium was unaware that an application had been filed on its behalf, SLD denied funding to every member of the consortium. We are cognizant of the need for SLD to establish efficient procedures to ensure that applicants comply with our rules and SLD's procedures. In this case, however, because of the complexity of the multi-tiered consortium, we conclude that a more thorough examination of the Clackamas application is warranted. SLD may find, upon review of the letters of agency from the Tech Centers, and additional information from the school, that the school districts have properly given authority to the Tech Centers to act on the school's behalf, and that the Tech Centers exercised that authority by participating in the OPEN consortium. Because SLD did not respond to Clackamas' request to provide letters of agency from the Tech Centers, the record is insufficient to determine whether Clackamas, through the Tech Centers, had actual authority to act on behalf of the school districts listed in the consortium. We, therefore, remand Clackamas' application to SLD for further fact-finding. However, we make no determination as to whether any members of the consortium are ultimately entitled to discounts.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Clackamas Education Service District, Marylhurst, Oregon, on October 13, 2000, IS REMANDED to SLD for further review consistent with this opinion.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey
Deputy Chief, Common Carrier Bureau

and Libraries Division, and setting forth its functions). Under the rules adopted in the Commission's *Eighth Reconsideration Order*, the Schools and Libraries Committee's functions include "development of applications and associated instructions," "review of bills for services that are submitted by schools and libraries," and "administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations." See 47 C.F.R. § 54.705(a)(1). See also *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal State Joint Board on Universal Service, Third Report and Order and Fourth Order on Reconsideration* in CC Docket No. 97-21 and *Eighth Order on Reconsideration* in CC Docket No. 96-45, 13 FCC Rcd 25058, 25075-76, paras. 30-31 and 34 (1998) (*Eighth Reconsideration Order*) (describing the functions of the Schools and Libraries Committee).